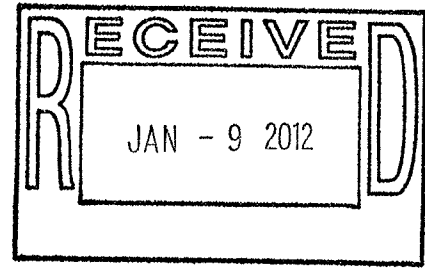


January 9, 2012

→ Select Board
Monterey Town Hall
PO Box 504 S/B 308
Monterey, MA
01245



Dear Wayne and Scott,

I will not be attending tonight's Select Board meeting. I request that this letter be read aloud at the start of the meeting or be distributed to and read by those in attendance, be attached to the minutes, and a copy given to the Monterey News.

With all due respect to the Chairman, I believe we have lost control of the Select Board meeting and the way we conduct town business generally. On Wednesday, January 4th, Melissa posted the meeting agenda for Monday, January 9th as follows:

6 - 7pm: Executive Session: Employees, Finance Committee; collective bargaining/contract negotiations with nonunion personnel; (will reopen to the public at 7pm)

This is misleading. The meeting must start in open session, and then, if a motion is made and seconded to go into executive session, it must be discussed and voted on. By stating that the meeting will be closed for executive session at 6pm and will "reopen to the public at 7pm," you have indicated that there is no open meeting that the public can attend at 6pm, during which time the executive session must be discussed.

More importantly, I object to the way this item came to be placed on the agenda. The Chair is permitted to place items on the agenda which he reasonably feels might be discussed, but instead two members of the Board declared their intention to go into executive session. Here is the relevant part of an email from Melissa:

I just spoke with both Scott and Wayne and both of them are fine with the negotiations being held in Executive Session on Monday with the understanding that after an agreement on all the items has been reached the minutes will then be made public.

I believe this kind of deliberation falls outside the exception to the open meeting law, which is defined thus:

"Deliberation", an oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction; provided, however, that "deliberation" shall not include the distribution of a meeting agenda, scheduling information or distribution of other procedural meeting or the distribution of reports or documents that may be discussed at a meeting, provided that no opinion of a member is expressed.

Unfortunately, there has clearly been an opinion expressed in Melissa's email by both of you that you are "fine with the negotiations being held in Executive Session." You did not narrowly discuss whether to place an executive session on the agenda for consideration in an open meeting, you said you are agreeable to an executive session. In essence, you declared your vote in advance of and outside of public meeting, and I don't see how I can effectively participate in a meeting in which the majority of my fellow Select Board members have already declared their intentions.

Furthermore, in an email dated January 4th, Melissa responded to my concerns with the following:

There was **not a quorum** when I spoke to Wayne or Scott as it was separately and on the phone as we have done on several other occasions for similar events just like this one. We are also exempt in this instance because it was an agenda question and I was only confirming that 2 of the 3 members were ok with the Executive Session being listed on the agenda so that the public would be aware.

This is a highly debatable interpretation of the law. Your communications may very well constitute a deliberation of a quorum according to Open Meeting Law:

To be a deliberation, the communication must involve a quorum of the public body. A quorum is usually a simple majority of the members of a public body. Thus, a communication among fewer than a quorum of the members of a public body will not be a deliberation, **unless there are multiple communications among the members of the public body that would together be a communication among a quorum of members.** Courts have held that the Open Meeting Law applies when members of a public body communicate in a manner that seeks to evade the application of the law. Thus, in some circumstances, communications between two members of a public body, when taken together with other communications, may be a deliberation.

I contacted the AG's office about this, but they said my only recourse was to file a complaint of an open meeting law violation. I have done so because I feel we all need to understand how we should conduct business, and the AG can only help us make such a clarification following a complaint. Ironically, I am required to present my complaint to the Chair of the Board, so I have submitted it along with this letter.

My other complaint is with the entire process leading up to the Chair's decision to put the executive session on the agenda. None of this took place in public meeting after December 19th, but instead was conducted by Melissa via emails and phone calls.

On December 20th, Melissa sent the following email:

The 7 full time employees met the other day and since it has been determined that negotiations can be held in Executive Session, the employees have asked me to forward this request:

We'd like to hold the negotiations in executive session with one member of the Select Board, one member of the Finance Committee and the 7 employees during normal business hours at the town hall.

Is this agreeable to you and if so which Select Board member would like to be at the negotiations?

I don't think it was appropriate to make such a request outside of public meeting, nor do I believe executive sessions can be held with only one Select Board member present.

On December 22, Melissa sent the following email:

I haven't heard from anyone on this and I need to know if this is acceptable so we can schedule a meeting and if it's not acceptable then to make the 1st hour of Monday the 9th's meeting closed to the public.

The Select Board cannot "make the 1st hour of Monday the 9th's meeting closed to the public" prior to the meeting, and I don't understand the request to close the meeting to the public if it's not acceptable to us? In any case, the Chair never responded.

On January 3rd, Melissa sent the agenda to the Board with the following item:

6 - 7pm: Executive Session: Employees, Finance Committee; benefits negotiations (will reopen to the public at 7pm)

I wrote back saying I wasn't aware that any executive session had been scheduled. When neither or you responded, it was clear to me that Melissa had submitted the agenda item without input from the Chair. Melissa then sent another email:

Jeremia had stated that the collective bargaining can be done in executive session with the employees. If the Board is not willing to hold this in Executive Session, please let me know so I can inform the employees, we are meeting this week.

Again, neither of you responded. She then ended another email by pleading once again for the board to authorize a posting.

Can each Board member please reply to me to let me know if they are agreeable to having Monday's meeting with the employees in executive session prior to tomorrow when I have to post this? I need to hear from each of you on this and I will give Scott and Wayne a call in addition to this email.

Select Board members cannot agree outside of public meeting to go into executive session "prior" to anything. They can only agree to add it to the agenda. I didn't see any reason why she "needed to hear from each of you on this," nor what the urgency was about, other than that the employees apparently want to go into executive session immediately so their compensation package cannot be discussed further in open session.

On January 4th, Melissa sent the following email:

I just spoke with both Scott and Wayne and both of them are fine with the negotiations being held in Executive Session on Monday with the understanding that after an agreement on all the items has been reached the minutes will then be made public.

The agenda will be listed as 6-7pm – Executive Session: Employees, Finance Committee; collective bargaining/contract negotiations with nonunion personnel; (will reopen to the public at 7pm) and on Monday the Board will take a vote to go into Executive Session for the above stated reason and your votes and roll call will be recorded. The tape recorder will still record so I can do minutes which will later be release.

Later she sent another email:

Just to be extra cautious since I am not sure why this one topic has taken such a strange turn, I placed a separate meeting notice for the Board for Monday 1/9 for 6-7 as an executive session with the Town Clerk in addition to the one we already have on file for Mondays at 6pm.

I don't know who directed Melissa to do this, either. I emailed you both and strongly suggested you contact town counsel and the AG's office for clarification on what is lawful procedure and what is not. But I never heard from neither of you....

I am not attending tonight's meeting because I believe you have preempted the process. Instead, I am submitting this letter in order to clarify my position regarding this issue *in open meeting*.

For the record, I am not in favor of going into executive session regarding employee compensation. For months we have discussed this issue in open session, and to date the employees, who have now requested we use executive session, have not given a reason why we should suddenly slip behind closed doors and negotiate with only one Select Board member, one Finance Committee member, and all seven employees.

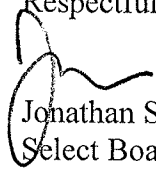
The Berkshire Eagle ran a story on December 20th stating that in the city of North Adams, the Finance Committee had recommended the City Council approve the Mayor's proposal for nonunion employee raises. They also asked the mayor to poll the employees on how they would like to have their raises received. I don't believe any of this was done in executive session, and I'm not aware of any small towns such as Monterey negotiating with nonunion employees in executive session. Why should we?

I favor transparency, full disclosure, and a thorough vetting of all aspects of employee compensation. This is for the benefit of the Board, the employees, and town residents. If you vote tonight to continue negotiations in executive session, which is of course your prerogative, whatever proposal finally comes out will have to be ratified by a Select Board vote in open session. I will have to vote against it, I will continue to discuss it in open session because I will not be bound by your agreement, I will not be able to support it at town meeting, and I expect that all tape recordings of the meetings be released afterward so everyone can hear for themselves exactly what could not be discussed in open session. I do not feel it is appropriate to rely on minutes taken by Melissa.

What I have supported—and will continue to support—is negotiating a very competitive employee compensation package in open session with all our employees, and making a recommendation for its approval at town meeting.

In the meantime, I ask the Chair, respectfully, who is running the Select Board meetings? It is my opinion that Melissa does not have proper guidance from you, and in fairness to her, when she has asked for it, it has not often been forthcoming. I also ask that the Chair run meetings from this point forward so that the Board will only conduct business in front of the public and not between sessions. I realize this will be inconvenient at times, but none of us, *myself included*, are immune to the perception that we may not be fulfilling our obligation as public servants responsibly and transparently. I feel we have possibly lost sight of this.

Respectfully,



Jonathan Sylbert
Select Board
Monterey